
UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

RICKY FORD,

Plaintiff,

versus

GUY SMITH, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:06-CV-710

**MEMORANDUM ORDER ADOPTING THE MAGISTRATE
JUDGE'S REPORT AND RECOMMENDATION**

Plaintiff Ricky Ford, an inmate confined at the Stiles Unit of the Texas Department of Criminal Justice, Correctional Institutions Division in Beaumont, Texas, proceeding *pro se* and *in forma pauperis*, brought this lawsuit pursuant to 42 U.S.C. § 1983.

The court referred this matter to the Honorable Keith F. Giblin, United States Magistrate Judge, at Beaumont, Texas, for consideration pursuant to applicable laws and orders of this court. The Magistrate Judge recommends this action be dismissed for failure to exhaust administrative remedies.

The court has received and considered the Report and Recommendation of United States Magistrate Judge filed pursuant to such referral, along with the record, pleadings and all available evidence. No objections to the Report and Recommendation of United States Magistrate Judge were filed by the parties.¹

¹ After the Report was filed, the Supreme Court issued its opinion in *Jones v. Bock*, ___ U.S. ___, 127 S.Ct. 910, 166 L.Ed.2d 798 (2007), ruling that the failure to exhaust administrative remedies is an affirmative defense under the PLRA, and inmates are not required to specially plead or demonstrate exhaustion in their complaints. *Id.*, 127 S.Ct. at 921. However, this holding does not foreclose the district court's ability to raise *sua sponte* the exhaustion requirement if it is clear on the face of the complaint that the plaintiff has not exhausted his administrative remedies. See *Freeman v. Watkins*, ___ F.3d ___, 2007 WL 779273, at *2 (10th Cir. Mar. 16, 2007); *Aquilar-Avellaveda v. Terrell*, 478 F.3d 1223, 1225 (10th Cir. 2007). Here, it is clear

ORDER

Accordingly, the findings of fact and conclusions of law of the Magistrate Judge are correct, and the report of the Magistrate Judge is **ADOPTED**. A final judgment will be entered in this case in accordance with the Magistrate Judge's recommendation.

SIGNED at Beaumont, Texas, this 20th day of April, 2007.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

on the face of the complaint that plaintiff did not exhaust the available administrative remedies prior to filing the complaint. Thus, plaintiff seeks relief to which he is not entitled, and the complaint should be dismissed. *See Ali v. Higgs*, 892 F.2d 438, 440 (5th Cir. 1990) (district court may *sua sponte* address obvious affirmative defenses to an *in forma pauperis* complaint); *cf. Underwood v. Wilson*, 151 F.3d 292 (5th Cir. 1998) (dismissal with prejudice based on failure to exhaust was appropriate in an *in forma pauperis* proceeding).